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COMMENT.

In *Ritter v. Mutual Life Insurance Co.*, 18 Sup. Ct. 300, the Supreme Court recently decided that intentional self-destruction by the insured when of sound mind is a defense to an action on the policy, even though the policy does not expressly declare that suicide will avoid it. One Runk, becoming hopelessly embarrassed financially, owing to speculation and squandering of trust property, took out a large amount of insurance with the intention of committing suicide and thereby leaving his executors enough money with which to pay his debts. The court held that an implied condition that the insured will not purposely, when of sound mind, take his own life, must be read into the policy for two principal reasons. First, because a contrary agreement could not have been within the contemplation of the parties at the time, for it is reasonably certain that the company would instantly reject such an application. Life insurance policies in this respect are like fire insurance policies—though they will cover losses attributable merely to negligence of the insured, without fraud, they will not cover losses intentionally caused by the insured. "To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay was intended to be left to his option." And, second, because a contract of insurance expressly providing for payment in such event would be against public policy as tempting or encouraging the insured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted. The leading case on this point is *Fauntleroy's case (Amicable Society, etc., v. Bolland*, 4 Bligh N. R. 194), decided in 1830, holding that death at the hands of the law as punishment for committing a crime would avoid a contract of insurance though there was no such exception in the policy.

Such a conclusion seems only natural and yet several State courts have reached a contrary result, though without much discussion of the subject and perhaps on doubtful grounds (see *Fitch v. Insurance Co.*, 59 N. Y. 557; *Mills v. Rebstock*, 29 Minn. 380; *Northwestern, etc., Association of Illinois v. Wanner*, 24 Ill. App. 357; *Morris v. State Mutual Assurance Co.*, 39 Atl. Rep. (Penn.) 52). These all rest on the first case of *Fitch v. Ins. Co.*, which held that the insured could recover because the policy was taken out for the benefit, not of himself, but of his wife and children, and "although they were bound by his representations, and any fraud he may have committed in taking out the policy, * * * yet they were not bound by any acts or declarations done or made by him after the issue of the policy, unless such acts were in violation of some condition of the

policy." And in this way the Pennsylvania Court distinguishes *Ritter v. Ins. Co.*, from its own case. But if an implied condition must be read into the policy that the insured, while sane, will not voluntarily destroy his life, *i. e.*, that the contract cannot cover the risk of suicide, it would seem according to their own reasoning as if it made no difference who the beneficiary might be. In *Smith v. National Benefit Society*, 123 N. Y. 85, when the facts were strikingly similar to those in *Ritter v. Ins. Co.*, the company set up as a defense the fraudulent scheme of the insured to take out a large amount of insurance and then commit suicide and were permitted to prove the suicide as one of the steps—the final completing—of the scheme and thus got around the earlier decision in *Fitch v. Ins. Co.*

The Alabama Supreme Court takes a long step in advance in *Drennon v. Mercantile Trust and Deposit Co.*, 23 So. Rep. 164, when it extends to a private mining and coke manufacturing corporation the six months preferred claim rule giving priority to the claims of laborers for wages rendered and of material men for supplies furnished within six months previous to the appointment of a receiver. This is the doctrine first clearly laid down by Chief Justice Waite in *Fosdick v. Schall*, 99 U. S. 235, when the concern was a railroad corporation. Stress was laid upon that fact in the opinion. In *Kneeland v. Trust Co.*, 136 U. S. 89, the Supreme Court expressly declared that the doctrine would not be extended beyond the exceptional case of a railroad. And it is believed that heretofore the courts have been unanimous in refusing to extend its application and in maintaining a broad distinction between railroad and other corporations. But the Alabama Court (two judges dissenting) proceed upon the theory that "the bondholders, or the receiver for them, have property, or something of value, to which the party invoking the court's aid has a better abstract right—a superior equity." And this equity arises and is rested upon one or other of three states of fact: (1) That the gross earnings of the corporation before the receivership, to which its laborers and persons furnishing necessary supplies are entitled in preference to the bondholders, have been diverted from them to the bondholders or expended in permanently improving the mortgaged property, or are in the hands of the receiver to be so paid or expended in further operation of the works for the benefit of the bondholders. (2) That, whether there has been any such diversion of the gross earnings directly or indirectly or not, the laborers have performed services in permanently improving the mortgaged property, which have inured directly to the benefit of the bondholders in enhancing the value of their security. (3) That services have been rendered in keeping the corporation "a going concern," that earnings have been thus realized and paid to the bondholders or held by the receivers, while the laborers have not been paid for services thus rendered prior to the receiverships. Different decisions of the

Supreme Court fully show the application of the doctrine to these three states of facts in the case of railroad corporations. But the Alabama Court claims that this equity exists as well in the case of a private as well as a public corporation. The right to be asserted is the same, the wrong done the employees is the same, the remedy is applied on considerations which take no account of whether the corporation is public or private, railroad or manufacturing, the maxim that he who seeks equity in applying for a receiver must do equity, applies as much to one as to another. Doubtless the necessity for the application of the doctrine arises more frequently in railroad cases, and ordinarily there is a greater necessity that they be kept "going concerns" from the point of view of the public; but from the point of view of the bondholders there is no such greater necessity and this necessity should be determined from their standpoint. The limitations which the principles of the doctrine themselves involve, prevent any encroachment upon vested rights or any usurpation of mechanic's lien laws; for they mark a distinct line between the particular corporation cases to which the doctrine applies and the ordinary cases of mortgages on property to secure the payment of debts; "there is not the slightest danger of the secured creditor in any case losing anything which he is entitled to on recognized principles of equity and good conscience."

Judge Coleman dissenting says that "the doctrine is a revolution in jurisprudence, subverting settled principles, and not the application of new remedies to existing rights," and that the gross income covered by prior executed mortgage does not belong in any sense to the laborer or material man as a matter of equitable right, but to the bondholder who by contract has secured a prior lien thereon, which the laborer and material man knew existed when they furnished their services or supplies. And *Fosdick v. Schall* is not based upon this theory of an abstract equity but upon the power of the court to impose conditions precedent to the appointment of a receiver and the grant of equitable relief.

Although the primary object of the Fourteenth Amendment to the Constitution of the United States was to guarantee complete freedom to the recently-emancipated colored people, it also gave to the federal courts the power to declare invalid all state laws and decisions abridging the rights of citizens, or denying to them the benefit of due process of law.

A decision rendering invalid a state law was asked for in *Holden v. Hardy*, 18 Sup. Ct. Rep. 383, where the state of Utah had passed a statute that no person should require more than eight hours' work per day from any employee engaged in a mine, or in the smelting, reduction, or refining of ores or metal. The constitutionality of this law was denied upon the ground of class legislation, denial of freedom of right to contract, and abridgement of the privileges of a

citizen, depriving him of the equal protection of the laws, and of his property and liberty without due process of law.

The correctness of the decisions of many of the states, that they have no power to restrict generally the hours of labor, is not denied by the Supreme Court; but it holds that this application comes within the right to provide for the health and safety of employees, being a valid exercise of the police power of the state. It very aptly decides that, if a state has the power, always heretofore recognized, to determine what safeguards shall be thrown about the lives of its citizens, as regards mechanical contrivances, it certainly can make such reasonable provisions as are necessary for the protection of their health.